of that contract into the note. Thus, a note reciting, "for consideration of carpenter work in our article of agreement" of given date, was held nonnegotiable. *Reynolds* v. *Richards*, 14 Pa. 205. And a note to pay a certain amount "for value received in one machinery as per contract" of certain date was burdened with all defenses which could be set up to an action on the contract. *First National Bank of Richmond* v. *Badham*, 86 S. C. 170, 68 S. E. 536. There is a contrary line of decisions which hold such a reference as that of the instant case to be a mere recital of consideration, and hence it does not affect the negotiability of a note. So a recital that "this note is given in accordance with the terms of a certain contract under the same date, and between the same parties" did not destroy the negotiability of the note. *Markey* v. *Corey*, 108 Mich. 184, 66 N. W. 493, 36 L. R. A. 117, 62 Am. St. Rep. 698. It seems that the latter is the better vew, since it is the policy of the law to favor negotiable instruments. For a discussion as to when an extension of time affects negotiability, see 5 VA. LAW REV. 145.

COMPROMISE—LIABILITY INSURANCE—DECREASING THE AMOUNT INSURED AGAINST.—The plaintiff was insured by the defendant to the extent of $5,000 against liability for accidents resulting from the operation of an automobile. A party injured by the automobile brought an action of damages for $25,000. A clause in the policy reserved to the insurer the right to defend such accidents or to settle on the best terms possible. Before trial of the action for the injury, the claimant, through negotiations of the insurer, agreed to accept $3,150 in satisfaction of his claim. The defendant advised the plaintiff that this was a reasonable offer, and that if the case proceeded to trial, it might result in a judgment much larger than the amount covered by the policy, but refused to agree to the proposed settlement, unless the plaintiff would bear $750 of the loss. In order to avoid the risk of a judgment in excess of the amount of his policy, the plaintiff contributed the money towards the proposed settlement, and then brought an action to recover such amount from the defendant. *Held*, the plaintiff can not recover. *Levin* v. *New England Casualty Co.*, 166 N. Y. Supp. 1055.

Although the facts in the instant case seem to present a question of first impression, yet it seems that they should be governed by the principles applicable to compromises, which are governed by the general rules applicable to all contracts. *Armijo* v. *Henry*, 14 N. M. 181, 89 Pac 305, 25 L. R. A. (N. S.) 275. See 5 R. C. L. 876. However, the law favors such contracts as tending to prevent litigation. *Smith* v. *Smith*, 36 Ga. 184; 91 Am. Dec. 761. While the controversy is fresh the parties themselves know more completely than any one else what justice requires at their hands. *Doyle* v. *Donnelly*, 56 Me. 26.

The principal elements necessary to a valid compromise are the reality of the claim made, and the good faith of the settlement. *Trenton St. Ry. Co.* v. *Lawlor*, 74 N. J. Eq. 828, 71 Atl. 234. While the adequacy of the consideration will not be inquired into, the want of any consideration whatever may be inquired into. *Creutz* v. *Heil*, 89 Ky. 429, 12 S. W. 926.

The holding in the instant case seems to be wholly dependent upon

the question of good faith. The insurer undoubtedly had a right to have the case against the insured proceed to judgment, and the surrender of this right might be held as a valid consideration for the money contributed by the insured. On the other hand, the insurer agreed to indemnify the insured up to the amount named in the policy, but it stipulated for the option to compromise or defend actions against the insured in order to protect itself against unjust claims; it, therefore, seems manifestly inequitable to allow the insurer to thus reduce its liability at the expense of the insured—to just that extent the efficacy of the policy is nullified. It is conduct of this sort on the part of the insurer that has resulted in so much unwise legislation on the subject of insurance.

EVIDENCE—NEGLIGENCE—"RES IPSA LOQUITUR."—The plaintiff purchased in the defendant's restaurant a cake, prepared, baked and wrapped in waxpaper by the defendant. While eating the cake, the plaintiff bit upon a nail concealed therein; whereupon she brought an action against the defendant for the injuries resulting. To sustain her action, the plaintiff relied upon the doctrine of *res ipsa loquitur*. *Held*, the doctrine of *res ipsa loquitur* does not apply. *Jacobs* v. *Childs Co.*, 166 N. Y. Supp. 798.

The doctrine of *res ipsa loquitur* (the thing itself speaks) is an exception to the general rule that negligence is not to be inferred, but must be affirmatively proved. *Johns* v. *Pennsylvania R. Co.*, 226 Pa. 319, 75 Atl. 408, 28 L. R. A. (N. S.) 591. This maxim is founded upon the principle that evidence of an injury, which may only be palliated or explained by facts within the peculiar knowledge of the perpetrator, carries with it proof of its wrongful character and places upon the perpetrator the burden of offering a just excuse. *Thompson* v. *St. Louis Southwestern Ry. Co.*, 243 Mo. 336, 148 S. W. 484. See WIGMORE, EVIDENCE, § 2509.

In a Georgia case, a person who was injured by swallowing bits of glass contained in a bottle of beverage was allowed to recover by merely showing the presence of the bits of glass. While the court did not mention the doctrine of *res ipsa loquitur*, it evidently applied that principle. *Watson* v. *Augusta Brewing Co.*, 124 Ga. 121, 52 S. E. 152, 110 Am. St. Rep. 157, 1 L. R. A. (N. S.) 1178. And in a New York case, a woman was allowed to recover for injuries received from a needle by merely showing its presence in an unfinished seam of a dress. *Garvey* v. *Namm*, 36 App. Div. 815, 121 N. Y. Supp. 442. In these cases, however, the substance causing injury was used in the production of the finished article in which it was found, and the natural presumption would be that it was left there through the negligence of the defendant. It has been contended that an entirely foreign substance should not so readily be presumed to have found its way into the article through the defendant's negligence.

Authority on the precise point involved in the instant case is scant. This case purports to follow *Hasbrouck* v. *Armour & Co.*, 139 Wis. 357, 121 N. W. 157, 23 L. R. A. (N. S.) 876, but aside from this case, there seems to be no authority for the doctrine here laid down.